IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.1729 OF 2005

Daimler Chrysler India Pvt.Ltd., ..Petitioners.

V/s.

Union of India & Ors. ..Respondents.

Mr.Prakash Shah i/b. D.S.K. Legal for petitioners.

Mr.A.S.Rao with Mr.S.M.Shah i/b. T.C.Kaushik for respondents.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 13TH APRIL, 2005.

P.C. :-

1. Heard the learned counsel for the rival parties. Perused the petition. Rule has already been granted.

2. Petitioners imported on payment of duty a prototype car. The imported car was re-exported within a period of two years from the date of import.

3. The petitioners claimed 98% of the drawback of the duty paid by them at the time of importation under

section 74 (1) of the Customs Act, 1962 (‘the Act’ for short). However, the customs department allowed the drawback of 60% of the duty under section 74(2) on the ground that prior to export, the imported prototype car was put to use in India. The 60% of the drawback claim was sanctioned and paid to the petitioners after a period of 10 months from the date of filing the drawback claim.

4. The petitioners filed appeal before the Commissioner of Customs (Appeals) challenging the order sanctioning drawback of 60% instead of 98%. The petitioners also claimed interest on the delayed sanction of the drawback claim. The Commissioner (Appeals) while allowing the appeal of the petitioners on merits thereby allowing drawback at 98% held that the petitioners are not entitled for interest. Both the petitioners and the revenue filed revision application before the Joint Secretary, Government of India. The Joint Secretary, Revision Application Unit, by a common order reversed the order of the Commissioner (A) and held that the petitioners are entitled to drawback at 60%. As regards interest, the Joint Secretary held that the petitioners are entitled to the interest. However, the the Joint Secretary directed the concerned authority to verify the relevant documents before granting interest.

5. The Writ Petition filed by the petitioners before this Court was disposed of by this Court by upholding the sanction of drawback of 60%. No order was passed by this Court on the interest portion since there was no challenge to the portion of the order of the Joint Secretary by which the Joint Secretary had directed the department to pay interest to the petitioners.

6. The Customs department has now rejected the claim of the petitioners regarding interest on the ground that this Court had rejected the Writ Petition filed by the petitioners and no orders have been passed on the interest. This order is the subject matter of this petition under Article 226 of the Constitution of India.

7. Having heard the rival parties, it is not in dispute that the order passed by the Government of India , Ministry of Finance (Department of Revenue) dated 24th September, 2002 has become final and conclusive for want of any further challenge in the higher forum. The operative part of the said order reads as under :-

> "... Even the order-in-original was issued only after being directed by the Commissioner (A). Hence, Government is of the opinion that the party is legally entitled for interest for the period prescribed statutorily. However, this payment is

> subject to verification of documents regarding claim of M/s.Daimler Chrysler (I) Pvt. Ltd. on behalf of M/s.Mercedes Benz India Ltd. and other relevant documents. "

8. A perusal of the aforesaid paragraph would go to show that the Government was of the opinion that the parties i.e. petitioners herein are entitled for interest prescribed statutorily. Therefore, so far as the claim of grant of interest is concerned that cannot be denied to the petitioners. Refund of drawback on verification of the documents has already been made by the respondents. Now the question remains at what rate the petitioners would be entitled to claim interest.

9. The petitioners has relied upon the Notification No.32/95-Cus (NT) dated 26th May, 1995 and another Notification No.36/2000-Cus (NT) dated 30th May, 2000 whereby in exercise of the powers conferred to the Central Board of Excise and Customs hereby fixes the rate of interest at 15% p.a. for the purpose of the section 27A of the Customs Act. The learned counsel appearing for the revenue submits that both the circulars were prior to 2000. After the order in 2002 there is considerable reduction in the rate of interest and, therefore, while granting interest the petitioners should not be granted interest at the rate of 15% p.a. The learned counsel

sought to place reliance in the case of **Commissioner of Central Excise, Hyderabad V/s. I.T.C. Ltd.** reported in **2005 (179) E.L.T. 15 (S.C.)**, whereby the Apex Court was pleased to grant interest at the rate of 12% p.a. The submission made by the revenue in this behalf deserves acceptance for the reasons stated therein.

10. In this view of the matter, we allow this petition and make the rule absolute in terms of prayer clause (b) of the petition (excluding the bracketed portion) and direct the respondents to pay interest at the rate of 12% p.a. on the refunded amount for the period from 27th May, 1997 to 2nd April, 1998. The payment of interest shall be made within a period of 8 weeks from today, failing which the amount shall carry further interest at the rate of 15% p.a. instead of 12% p.a. till the payment is finally realised.

11. Petition accordingly stands disposed of with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)